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ABSTRACT

In 1973, the U.S. Supreme Court remanded Keyes v Denver to the district court for further proceedings. In past hearings, the court had concluded that minority populations in Denver were receiving an inferior instructional program in violation of constitutional and legal rights. After remand from the Supreme Court, the court requested assistance in developing an instructional program designed to equalize school achievement. Plaintiffs and intervenors were to obtain the services of experts in the education of minority personnel in order to formulate a plan to accompany the pupil assignment plan. The plan which was presented to the court drew heavily from a prior education plan developed for the San Felipe/Del Rio District in Texas. This plan was subsequently modified by two addenda. When the plan ordered implemented by the district court in the Denver public schools was appealed to the Tenth Circuit Court of Appeals, the appellate court reversed the lower court's order. A reason for the reversal was that some of the schools in which the plan was to be piloted were not included in the desegregating pupil assignment plan. The case was remanded to the lower court for a determination of the relief necessary to insure that Mexican Americans and other minority children will have the opportunity to acquire proficiency in the English language. (NQ)

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KEYES v DENVER

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May 1976

In 1973, the U.S. Supreme Court remanded Keyes v Denver to the district court for further proceedings. This case differed from previous desegregation cases in that: (1) it was the first segregation case outside the South, and lacked the clear-cut dual system of education for blacks and whites commonly found in the southern states; (2) made fine distinctions between de facto and de jure segregation; and (3) addressed itself to issues of equality of educational opportunities rather than limiting the integration effort to pupil assignment.

In past hearings in this case, the court had concluded that minority populations in Denver were receiving an inferior instructional program in violation of constitutional and legal rights. After remand from the Supreme Court, the court requested assistance in the development of an instructional program designed to equalize school achievement.

Existing inequalities in the Denver school district were described by the court as follows:

> The educational opportunity in the minority schools has been proven in our present trial as well as in previous trials to be inferior to that in the majority schools.

The district court's broad interpretation of desegregation was consistent with the Supreme Court's interpretation in this litigation. The Supreme Court had previously noted in this case the close relationship between segregation, curriculum and other activities.

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> The most routine decisions with respect to the operation of schools, made almost daily, can affect in varying degrees the extent to which schools are initially segregated, remain in that condition, are desegregated, or --for the long term future-- are likely to be one or the other. These decisions include action or nonaction with respect to . . .the recruitment, promotion and assignment of faculty and supervisory personnel . . .the determination of curriculum including whether there will be "tracks" that lead primarily to college or to vocational training . . .and even decisions as to social, recreational and athletic policies.

The Education Plan

The district court called upon plantiffs and intervenors to obtain the services of experts in the education of minority personnel in order to formulate a plan to accompany the pupil assignment plan for " . . . a system of compensatory education programs carried out in an integrated environment, designed to equalize achievement." The Mexican American Legal Defense and Educational Fund obtained the services of Dr. Jose A. Cardenas to develop such a plan. After several meetings with plantiffs' attorneys including James Nabrit (NAACP) and Gordon Greiner; attorneys for defendant/intervenors, Sanford Rosen and Paul Baca, the Congress of Hispanic Educators (CHE), and the Denver Black Teachers Organization, an educational plan was developed and presented to the court. The plan drew heavily from a prior education plan developed for the San Felipe/Del Rio District in Texas, and ordered implemented by the federal court in the Eastern District of Texas. The Texas plan had been appealed to the Fifth Circuit Court of Appeals where it had been sustained.

The so-called "Cardenas Plan" was based on the concept of incompatibilities between traditional instructional programs developed for a white, Anglo Saxon, English-speaking middle class population and the characteristics and learning styles of minority children. The scope of the plan was comprehensive, including school district modifications in its philosophy, policy, rules and regulations, scope and sequence, curriculum materials and methodologies, staffing patterns and training, co-curricular activities, student personnel services, pupil non-instructional materials, community involvement, and evaluation activities. The "Cardenas Plan" as presented to the court was subsequently modified by two addenda. The first addendum was a system for monitoring program implementation and the effectiveness of the program, and a second addendum developed by the Congress of Hispanic Educators in Denver which would provide, on the basis of the framework provided by Dr. Cardenas, specific and meticulous changes in the Denver public schools.

It is interesting to note that there was virtually no opposition on the part of the defendant school district to the rationale or instructional programs prescribed in the "Cardenas Plan". Dr. Louis Kishkunas, Denver Superintendent of Schools, testified that

> I found as I read the plan that most of the conclusions that Dr. Cardenas came to replicated or duplicated the conclusions that I came to a long time ago . . . I am sure that many of the conclusions he came to, many of the facts that he states are applicable to the Denver situation.

Dr. David Roscoe Davidson, Assistant Superintendent of the Educational Division, also supported the Cardenas Plan and the addendum in his testimony. 4

However, school district testimony questioned the implementation of the plan, and the need for extensive resources for implementation. The district court notes, "most of the opposition to the Cardenas Plan generated during the evidentiary hearings went to the practicality of the plan and to problems of its implementation rather than to the educational principles expoused."

In the final judgement and decree issued by Judge William Doyle, the school district was instructed to

> . . . further develop a bilingual-bicultural education program in accordance with the model presented by Dr. Jose Cardenas or a plan substantially and materially similar thereto and incorporating to the extent feasible the proposals set forth in the Addendum to the Cardenas Plan. Such program shall consider and treat the matters of educational philosophy, policies, scope and sequence, curriculum, staffing, co-curricular activities, student personnel services, non-instructional needs, community involvement and evaluation.
>
> The defendants shall engage the services of a qualified consultant or consultants to assist in the development and implementation of such program.
>
> The program shall be implemented at Del Pueblo elementary school with provisions for voluntary enrollment by Anglo and Black students in September, 1974; the program shall be implemented on a pilot basis at Cheltenham, Garden Place and Swansea elementary schools and at Baker Junior High School and West High School. It is anticipated that as these programs are developed and proved, they will be placed in other schools where needed and/or desired.

The Tenth Circuit Reversal

Whereas, the Fifth Circuit Court of Appeals had sustained a similar plan for the San Felipe/Del Rio School District, when the education plan ordered implemented by the district court in the Denver public schools was appealed to the Tenth Circuit Court of Appeals, the appellate court reversed the lower court's order.

One of the reasons for the reversal was that some of the schools in which the plan was to be piloted were not included in the desegregating pupil assignment plan. The Tenth Circuit stated

> . . . Bilingual education . . . is not a substitute for desegregation. Although bilingual instruction may be required to prevent the isolation of minority students in a predominantly Anglo school system, see Lau v. Nichols, 414 U.S. 563; Serna v. Portales Municipal Schools, 10 Cir., 499 F_2 1147, such instruction must be subordinate to a plan of school desegregation.

The Tenth Circuit further noted

> . . . The Cardenas plan therefore requires an overhaul of the system's entire approach to education of minorities; its proposals extend to matters of educational philosophy, governance, instructional scope and sequence, curriculum, student evaluation, staffing, non-instructional service and community involvement. The plan also proposed a mechanism for comprehensive monitoring of the program's status. Continuing evaluation by ten "Equal Educational Opportunity Committees," each composed in part of persons from outside the school system, is necessary, according to the Plan, because the school system itself "lacks accountability." In the Addendum

to the Cardenas Plan, intervenor CHE details how the Plan would be applied in Denver. These proposals, it must be emphasized, touch virtually every aspect of curriculum planning, methodology, and philosophy presently the responsibility of local school authorities. CHE proposes, for example, the inclusion of specific courses in the curriculum, adoption and publication of specific educational principles, provision of early childhood education (beginning at age three) and adult education for minorities, and provision of adequate clothing for poor minority school children. . . . But the court's adoption of the Cardenas Plan, in our view, goes well beyond helping Hispano school children to reach the proficiency in English necessary to learn other basic subjects. Instead of merely removing obstacles to effective desegregation, the court's order would impose upon school authorities a pervasive and detailed system for the education of minority children. We believe this goes to far.

The Tenth Circuit reversal has been interpreted by many as a reversal of its previous position on the issue of bilingual education. This is not the case. In its Denver reversal, the Tenth Circuit stated

> Although bilingual instruction may be required to prevent the isolation of minority students in a predominant Anglo school system . . . such instruction must be subordinate to a plan of school desegregation.

The court further states

> Neither Lau v. Nichols . . . nor this court's holding in Serna v. Portales . . . is contrary to our position.

The Tenth Circuit Court of Appeals remanded the case to the lower court for a determination of the relief necessary to insure that Mexican Americans and other minority children will have the opportunity to acquire proficiency in the English language.

The Future of Bilingual Education in Denver

At present, the lower court is again holding hearings for determination of a court order relating to bilingual/bicultural education. In a February 10, 1976 statement, Judge William Doyle states

> . . . "we are directed on remand to determine the relief, if any, necessary to insure that Hispano and other minority children will have the opportunity to acquire proficiency in the English language." The mandate does not limit this education to children who are unable to speak the English language and thus the school district might consider whether bilingual education is needed to aid children who lack proficiency in the English language. There are undoubtedly other problems and approaches to consider.

Summary

Contrary to arguments being developed in interpretations of the Keyes v Denver Final Judgement and Decree by the Tenth Circuit Court of Appeals, the strong legal backup for bilingual education developed in Lau and Portales v Serna has not been weakened. The Denver reversal merely reinforces (1) the Court's long standing reluctance to administer school districts, particularly to the degree specified in the "Cardenas Plan" and CHE amendment and (2) its strong support of the concept of integration (through student placement) as essential to eliminating the dual school system.